

October 22, 1999

**USE OF PRIOR-YEAR FUNDS FOR NON-RECURRING MAINTENANCE (NRM)  
CONSTRUCTION PROJECTS**

**1. PURPOSE:** This Veterans Health Administration (VHA) Directive provides guidance for the appropriate use of prior-year funds in an expired account in accordance with the Expired Funds Control Act of 1990, Title 31 United States Code (U.S.C.) 1551-1557.

**2. BACKGROUND:** The enactment of Public Law 101-510 (section 1405(a), known within VA as the “Expired Funds Control Act of 1990”) on November 5, 1990, prescribes new rules for expired appropriation accounts in sections 1551 through 1557 of Title 31 U.S.C. The Act extends an expired account’s fiscal year identity to 5 years and permits the recording, adjusting and liquidating of obligations properly charged to that account. Thus, an adjustment may be made to an existing obligation where the adjustment or contract change is within the scope of the original contract. After the 5-year period has elapsed, all obligated and unobligated balances are canceled and the expired account is closed.

a. For purposes of the Act, the term a “contract change” means: a change to a contract under which the contractor is required to perform additional work. The change must be within the general scope of the contract or is pursuant to a provision in the original contract. The term does not include adjustments to pay claims or increases under an escalation clause. A change within the general scope of the contract or made pursuant to a provision in the contract will be charged against the appropriation current at the time the contract was originally executed. One exception to this definition applies to cost reimbursement contracts, and therefore, will not be addressed here.

b. This section will provide guidance in determining whether a change is within the general scope of contract. If the upward price adjustment occurs and is enforceable under a provision in the original contract, it is to be charged against the appropriation current at the time the contract was originally executed, even though the adjustment is necessitated in a subsequent year. The reasoning is that a contractually permissible change order does not give rise to a new liability, since that liability arises at the time the original contract is executed. The subsequent price adjustment is viewed as reflecting a bona fide need of the same year in which funds were obligated for payment of the original contract price. The tests that contracting officers apply to determine whether a modification is within the general scope of the contract should be applied when determining whether prior-year funds may be charged. For example, it would not be appropriate to modify a contract to upgrade existing elevators in Buildings 1 and 2 from the use of motor generator drives to Short Circuit Relay Drives, to include the upgrade of elevators in Buildings 3 and 4 as well. The Competition in Contracting Act (41 U.S.C. § 253) would require a new procurement. While the additional work may be necessary or may have been included as part of a proposal for an non-recurring maintenance (NRM) project, it is not a change within the general scope of the contract, would result in a new liability, and is, therefore, not to be charged against the appropriation current at the time the contract was originally funded. The scope of the contract is the basis for applying the test, not the scope of the NRM project as proposed.

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**3. POLICY:** It is Department of Veterans Affairs (VA) policy that modifications to existing obligations for construction projects, in accordance with 31 U.S.C. Sections 1551-1557, may be paid for from prior-year funds in an expired account only where the adjustment or contract change is determined to be within the scope of the original contract or is pursuant to a provision in the contract, as defined in this directive. Adjustments or contract changes that do not comply with the requirements shall be funded from a current-year appropriation.

**4. ACTION**

**a. Required Action, Monitoring, and Tracking**

(1) All changes to prior-year obligations that require an upward adjustment in the price of the original obligation will be reviewed monthly by VHA Headquarters. The VHA Chief Financial Officer (CFO) (173) will monitor prior-year obligations and track cumulative increases for contract changes for each expired appropriation. Once cumulative changes in a fiscal year for an expired appropriation approach \$4 million at the appropriation level, the VHA CFO (173) will instruct all field stations to submit further requests for additional obligation authority from the appropriation through the appropriate Network to (173A) via MS exchange. Requests **MUST** be submitted through the Network. This will enable the preparation of necessary reports to obtain required approval of the Assistant Secretary for Financial Management (004), as required by 31 U.S.C. 1553(c) (1).

(2) Once cumulative changes in a fiscal year for an expired appropriation approaches \$25 million at the appropriation level, the VHA CFO (173) will prepare required notifications to the appropriate authorizing committees of Congress and the House and Senate Committees on Appropriations of VHA's intent to obligate such funds. This notification in accordance with 31 U.S.C. 1553 (c) (2) will be submitted by the Secretary of Veterans Affairs not less than 30 days before the obligation is made.

(3) In order to permit the tracking of NRM prior-year obligation adjustments, station fiscal staff must ensure that all NRM projects are obligated under program 23, including station level projects (those funded at the facility level with minor improvement portion less than \$25,000) from fund code 0160A1 (medical care - category A - limitation 01) or 0160B1 (multi-year medical care - category B – limitation 01).

(4) No Network CFO or accounting officer may accept a request for additional obligation authority for additional work on a prior-year obligation unless the request is over the signature of the Contracting Officer who has made a determination and certifies that the additional work is within the scope of the original contract.

(5) Upon notification that further prior-year fund use requires processing through VHA CFO (173A), VA medical centers will be responsible for ensuring that all required information is submitted to the Network CFO to expedite the request. Incomplete or incorrect requests, e.g., those in which the contract date does not agree with the appropriation year from which funds use is being requested, will be returned for resubmission.

**b. Full Control Accounting**

(1) All accounts beginning with 1996 are subject to the rules of "full control." This means that the facility may no longer over-obligate those expired accounts. The medical center fiscal or

equivalent office must verify that prior-year funds for the increase are, in fact, available in an appropriate prior-year account at the medical center.

(2) The first source of funds should be the original account from which the obligation was made. If the funds in this account are insufficient, then the following chart reflects additional sources that may be used to fund a prior-year obligation (specific fiscal years are shown to show relationship of accounts and need to be adjusted for the specific fiscal year being addressed):

**Initial Obligation**

**Additional Resources**

3660160 and  
BOC 31 or 32

365/60160  
366/70160 if initial obligation recorded in  
August or September 1996

366/70160

3660160 if initial obligation recorded in  
FY 1996  
3670160 if initial obligation recorded in  
FY 1997  
367/80160 if initial obligation recorded in  
August or September 1997

(3) If funds are not available in any of these accounts, the station must then coordinate with the Network CFO to identify a source of available prior-year funds from another facility within the Network or from another Network. The Network will then request (173A) to affect the transfer between stations through the Financial Management System (FMS).

c. **Responsibilities.** This directive defines a multi-level review, monitoring, and reporting process at the medical center, the network, and in VHA Headquarters. Responsibilities in this process are defined as follows:

(1) **Contracting Officer.** It shall be the sole responsibility of the contracting officer to make the determination as to whether a change that requires additional obligation authority is within the scope of the original contract and, therefore, whether it may be charged to a prior-year appropriation. Auditors reviewing amendments to NRM projects involving the use of prior-year funds will look to the contracting officer for adequate documentation to support these determinations.

(2) **Fiscal Officer.** It shall be the responsibility of the fiscal officer at the medical center to:

(a) Ensure that all NRM, as well as “station level” projects (those funded at the facility level with minor improvement portion less than \$25,000), be obligated under program 23 from fund code 0160A1 (medical care - category A - limitation 01) or 0160B1 (multi-year medical care - category B – limitation 01).

(b) Subject to the rules of “full control”, verify that prior-year funds for the increase are, in fact, available in a appropriate prior-year account at the medical center or within the network.

(c) Submit the request for use of prior-year funds to the Network CFO for approval or processing through the VHA CFO (173A).

(3) **Network CFO.** It shall be the responsibility of the Network CFO to:

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(a) Verify that the contracting officer has made a written determination that the effected change is within the scope of the original contract.

(b) Approve requests for use additional obligation authority of prior-year funds until such time as cumulative obligations against a prior-year appropriation reach \$4 million on a nationwide basis.

(c) Once cumulative obligations in a fiscal year for an expired appropriation exceed \$4 million at the national level, process further requests for additional obligation authority from the appropriation through the VHA CFO (173A).

(4) **VHA CFO.** It shall be the responsibility of the VHA CFO (173A) to:

(a) Monitor the prior-year obligations and track cumulative increases for each expired appropriation at the appropriation level. Once cumulative changes in a fiscal year for an expired appropriation exceed \$4 million, the VHA CFO will instruct all field stations to submit further requests for additional obligation authority through the appropriate Network CFO to (173A).

(b) The VHA CFO (173) will prepare necessary reports for approval of the Assistant Secretary for Financial Management (004) as required by 31 U.S.C. 1553 (c) (1) or notification of Congress as required by 31 U.S.C. 1553(c)(2).

**5. REFERENCES**

a. Title 31 U.S.C. Sections 1551-1557.

b. Office of Management and Budget (OMB) Bulletin 91-07, "Budget Execution Procedures for Closing Accounts," dated January 17, 1991.

c. Principles of Federal Appropriations Law. Second edition, Volume 1, Chapter 5.

**6. FOLLOW-UP RESPONSIBILITY:** The Chief Network Office (10NB) is responsible for the contents of this directive.

**7. RESCISSION:** None. This VHA Directive expires October 31, 2004.

S/ by M. L. Murphy for  
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Acting Under Secretary for Health

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